In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1668

AMERICAN BEEF PACKERS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 16-19) is reported at 438 F. 2d 331. The Board's decision and order (Pet. 20-55) are reported at 176 NLRB No. 42.

JURISDICTION

The judgment of the court of appeals was entered on February 8, 1971. The petition for a writ of cer-

tiorari was filed on May 3, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that the company lent support to the union's effort to coerce membership therein and subsequently recognized the union and entered into a collective bargaining agreement with it, at a time when the union did not represent a voluntary majority of the company's employees.

STATUTE INVOLVED

The relevant provision of the National Labor Relations Act (61 Stat. 136, as amended, 73 Stat. 519, 29 U.S.C. 158) is set forth at page 2 of the petition.

STATEMENT

A. The Board's Findings of Fact

The Company, a meat packer with plants in Oakland, Iowa, and Omaha, Nebraska (Pet. 23), began slaughtering operations at its Fort Morgan, Colorado, plant on June 10, 1968.

On that date, Arthur L. Morgan, the president of Morgan Union,[1] told plant superintendent John Stefanich that he wished to see employee Larry Johnson (Pet. 25; A. 129).[2] Stefanich escorted Johnson from

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[1] Morgan Union represented the employees at the Company's other plants (Pet. 24).

[2] "A." references are to the appendix to the briefs in the court below which is on file with the Clerk.

his work station to the plant parking lot, introduced him to Morgan, and left (Pet. 25; A. 38). At Morgan's request, Johnson accepted the position of steward for the union, and Morgan gave him check-off authorization cards to be signed by the employees (Pet. 25; A. 39). Johnson told each employee that he could either sign the card or not and, if he signed, he should return the card either to Johnson or Stefanich (Pet. 29; A. 54).[3]

Later that same day, June 10, Johnson told Stefanich that the card signing was coming along slowly because he did not work on the "kill floor" where most of the employees performed their duties. Johnson asked for help to get the cards signed; Stefanich agreed that Don Kroshus, who worked on the "kill floor," should be enlisted to help (Pet. 46; A. 42, 44-45, 48, 60). According to Johnson, Stefanich thereupon brought Kroshus back to his office (Pet. 46; A. 44-45, 63). Johnson told Kroshus about the Morgan Union, gave him blank check-off cards, and told him how to get them signed. Kroshus testified that at this meeting Stefanich told him that Morgan Union represented the Company's employees in Oakland, Iowa and that the Company wanted it to represent the employees in Fort Morgan (Pet. 46; A. 63).

Following this meeting, Kroshus returned to the locker room where the "kill floor" men were cleaning up and eating lunch. He told them that Morgan Union was the union that represented the Company's

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[3] Acting on instructions from Stefanich, Johnson delivered every card he received to Stefanich (Pet. 29; A. 41).

employees in Oakland; that the Company wanted it to represent the Fort Morgan employees; and that anyone who did not sign a card would not be working there very long. (Pet. 46; A. 99.) After work that day, Kroshus handed employee Jess Pierce a card, stating that if Pierce did not sign it he "would probably be dismissed" (Pet. 41-42; A. 87). The next day, June 11, Kroshus had a heated argument with employee Trujillo. Kroshus stated: "Anybody that didn't sign it [the check-off card] they [the company] would fire them." Shortly thereafter, Foreman O'Del told Trujillo: "Anybody that didn't sign that card was fired." Trujillo then signed the check-off card and handed it to O'Del. (Pet. 42, 45, 46; A. 99-101.) On June 12, during lunchtime and in the presence of other employees, Kroshus handed employee Franco a card, stating that, if Franco did not sign it, he "wasn't going to have [a] job too long." Franco signed the card the following day and put it on the desk of Stefanich's secretary (Pet. 42-43, 44-45; A. 109).

In the meantime, on June 12, Arthur Morgan had given Tom Sparks, the Company's manager of operations, a list of the employees who he claimed had signed check-off cards; on this basis he demanded recognition of the union (Pet. 26; A. 15-16). Sparks compared the list with the cards on file in his office and accorded recognition to Morgan Union (Pet. 26; A. 20). Using copies of contracts that the Company had entered into with the Union at its other plants as a guide, and after negotiating for about one hour, Morgan and Sparks reached agreement. Morgan

stated, however, that he would sign the agreement only if it were approved by Johnson. Subsequently, a contract dated June 12, 1968, covering the Fort Morgan employees, was signed by Sparks and Johnson. Arthur Morgan signed the contract on June 15, at Oakland, Iowa (Pet. 26; A. 23-24, 30-32).

Early in July, the Amalgamated Meat Cutters Union and the International Union of Operating Engineers filed separate petitions with the Board for representation elections at the Fort Morgan plant. Those unions also filed charges which led to the instant proceeding. (Pet. 22.)

B. The Decisions Below

The Board found that the Company violated Section 8(a)(2) and (1) of the Act by recognizing Morgan Union, and by entering into a collective-bargaining agreement containing a dues check-off provision, at a time when the union did not represent an uncoerced majority of the Company's employees (Pet. 20, 50). The Board ordered the Company to cease and desist from recognizing Morgan Union as the representative of any of its employees and from giving effect to the June 12 contract, unless and until that union shall have been certified by the Board (Pet. 51). The Board also ordered the Company to reimburse all present and former employees for union dues (with 6 per cent interest) withheld from their wages and remitted to Arthur L. Morgan (Pet. 50-52). The court of appeals, in a *per curiam* decision, upheld the Board's decision and enforced its order (Pet. 16-19).

ARGUMENT

The ruling below was correct and there is no occasion for further review.

1. Petitioner seeks to take this case outside the "substantial evidence" rule of *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 477, by contending (Pet. 7-12) that the Trial Examiner's ultimate factual conclusions were not compatible with the testimony of the witnesses he deemed worthy of belief. This claim is unfounded and is answered in the Examiner's lengthy opinion (see Pet. 22-49) which the Board affirmed (Pet. 20). It is enough to note here that the Examiner's opinion reflects substantial basis for crediting the testimony of Kroshus that his meeting with Johnson and Stefanich occurred on June 10—prior to the time the Company granted recognition to Morgan Union rather than afterward—and that this conclusion is not at variance with the Examiner's other factual findings. As the Examiner pointed out, Kroshus' version of the date of the meeting was corroborated by the dates on the authorization cards that he solicited (Pet. 44); moreover, Kroshus' testimony concerning the Company's affirmative attitude toward Morgan Union was corroborated by the testimony of other witnesses (Pet. 41-43, 45).

2. Petitioner's additional argument (Pet. 12-14)—that the Examiner erred in refusing to allow testimony as to Stefanich's treatment of Morgan Union stewards when he was a supervisor at the Oakland plant—is insubstantial. The Examiner did admit

testimony concerning Stefanich's "poor relations" with Arthur Morgan at the Oakland plant and Stefanich was permitted to testify that he had told employees at that plant not to join Morgan Union (A. 144). In this factual setting, the Trial Examiner acted well within his discretion in excluding further examination of Stefanich as to his alleged harassment of stewards at the Oakland plant as "going entirely too far * * *" (A. 144). The point had been made and further questioning along this line could have had little additional bearing as to whether Stefanich, or, more significantly, the Company in fact favored the organizational efforts of the union at the Morgan plant. See *National Labor Relations Board* v. *Remington-Rand*, 94 F. 2d 862, 873 (C.A. 2), certiorari denied, 304 U.S. 576.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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